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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,617	03/30/2001	Leslie James Squires	HUN 0004 PA	8494

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EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/762,617	Applicant(s) SQUIRES ET AL.	
	Examiner Sam Chuan C. Yao	Art Unit 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-14, 17-19, 21-23, 30-35, 37-44, 46-53, 57-61 and 63-88 is/are pending in the application.
- 4a) Of the above claim(s) 39-44, 46-53 and 66-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-6, 8-14, 17-19, 21-23, 30-34, 58-61 and 84-88 is/are rejected.
- 7) ☒ Claim(s) 7, 35, 37, 38, 57 and 63-65 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-6, 8-14, 17-19, 21-23, 30-34, 58-61 and 84-88 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Leak et al (US 5,763,041) for reasons of record set forth on prior office actions dated 06-03-03 in numbered paragraph 5, dated 01-22-04 in numbered paragraph 5, and for reasons set forth hereinafter.

With respect to claims 84-88, as for an added limitation of a spunbonded non-woven having a minimum weight of approximately 50 g/m², see column 3 line 55 to column 4 line 3, and independent claims 1 and 23 of the Leak et al patent. Since the weight range taught by Leak et al overlaps with the recited weight range; and, since the weight range disclosed by Leak et al has "sufficient specificity" as evidence from the fact that, an end point (i.e. 60 g/m²) of a weight

Art Unit: 1733

range taught by Leak et al falls within the recited weight range and the overlapping weight range is recited in two **independent claims** 1 and 23, the recited overlapping weight range is anticipated by teachings of Leak et al. In any event, it would have been obvious in the art to use a spunbonded nonwoven having a weight basis of around 60 g/m², because one in the art would have applied a workable weight range basis for a spun-bonded web disclosed by Leak et al.

As for the wherein and thereby clauses recited in claims 84 and 87 as well as a characteristic (i.e. visible interference pattern) recited in claims 85 and 88, in light of the similarity of the production processes, the recited characteristics of a resultant laminated web are taken to be inherent in a resultant laminated web taught by Leak et al.

Note: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products."** In re Best, 562 F2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).

With respect to claims 2-6,8-14,17-19,21-23,30-34, and 58-61, these claims are taken to be anticipated for the same reasons set forth in the prior office actions.

Allowable Subject Matter

4. Claims 7, 35, 37-38, 57 and 63-65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter:

There is no suggestion in the prior art to perform the limitations recited in these claims in the process taught by Leak et al.

Response to Arguments

Applicant's arguments filed on 04-07-04 have been fully considered but they are not persuasive.

At the outset, it is quite clear that, an embossing pattern to a fiber web in a process taught by Leak et al is "varied"/different relative to the lamination pattern for the fiber web and a film in terms of at least one of size, bonding density, bonding area and bonding points configuration/arrangement. Therefore, *"the amount of point misregistration between the emboss pattern ... lamination pattern"* must be inherently controlled in the process taught by Leak et al, thereby avoiding the occurrence of unlaminated patches in a resultant laminate. Once again, simply because Leak et al does not use the same terminology as the recited claims in describing the prior art embossing and lamination process, it does not mean that, the recited process limitation is absent, especially when the resultant articles of both processes are indistinguishable, and especially when

Leak et al clearly teaches an embossing pattern being varied/different relative to the lamination pattern in terms of at least one of size, bonding density, bonding area and bonding points arrangement (figures 2-3, figures 7-9 and examples).

Counsel argues on page 29 full paragraph 1, *"Applicants wish to emphasize that in Leak et al., "first bonded areas" refers to the bonding inherent in the raw*

material, i.e. the spunbonded nonwoven fabric ..." (quotation in original; bold-

face added). Is Counsel suggesting that, it is inherent to form a spun-bonded

web which has a pattern bonding areas? Is so, Examiner strongly disagrees with

Counsel argument. In any event, this does not change the fact that, a fiber web

embossing pattern in a process taught by Leak et al is "varied"/different relative

to a film/web lamination pattern in terms of at least one of size, bonding density,

bonding area and bonding points configuration/arrangement. As for Counsel's

diagrammatic illustration provided on page 29, it is unclear how Counsel arrived

at the diagrammatic illustration. Did Applicant conduct an experiment on a

particular embodiment disclosed by Leak et al. If so, it is suggested for Counsel

to point out a particular embodiment disclosed by Leak et al. Equally important,

Counsel's argument is not commensurate with the scope of the recited claims.

The claims as presently recited do not require complete mis-registration between

embossing pattern and lamination pattern, nor does the claim require complete

avoidance of an occurrence of visible unlaminated patches.

Counsel argues on page 32 full paragraph 2 that *"Leak et al disclose a basis*

weight for the second nonwoven fabric material layer 14 (Figure 1) of from about

Art Unit: 1733

5 g/m² to about 60 g/m² ... which overlaps the recited approximately 50 g/m² ..."

Thus, Leak cannot anticipate the subject matter the subject matter claimed in new claims 84 and 87 because one would have to select a fabric weight from the broadly recited range. The act of selection negates anticipation." Counsel's attention is directed to MPEP 2131.03. Accordingly, a prior art which discloses a range within, overlapping, or touching the claimed range anticipates if the prior art range discloses the claimed range with "sufficient specificity". Since a spunbonded web weight basis "from about 5 g/m² to about 60 g/m²" is recited in **independent claims 1 and 23**, this illustrates that the above weight basis range is essential in the process of Leak et al. Moreover, an end point (i.e. 60 g/m²) of a weight range taught by Leak et al falls within the recited weight range. For these reasons, the overlapping weight range disclosed by Leak et al is reasonably taken to be have a sufficient specificity. Therefore, the recited overlapping weight range is anticipated by the overlapping weight range taught by Leak et al. In any event, as noted above, it would have been obvious in the art to use a spunbonded nonwoven having a weight basis of around 60 g/m², because one in the art would have applied/chosen a workable weight range basis disclosed by Leak et al.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP


Art Unit: 1733

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

Scy
04-06-04